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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**
13 **AT SPOKANE**

14 STATE OF WASHINGTON,

15 Plaintiff,

16 v.

17 BETSY DeVOS, in her official
18 capacity as Secretary of the United
19 States Department of Education, and
20 the UNITED STATES
21 DEPARTMENT OF EDUCATION, a
22 federal agency,

Defendants.

NO. 2:20-cv-00182-TOR

PLAINTIFF STATE OF
WASHINGTON'S MOTION TO
EXPEDITE AND SET
BRIEFING SCHEDULE FOR
PARTIAL SUMMARY
JUDGMENT

NOTED FOR: July 1, 2020
Without Oral Argument

Plaintiff State of Washington moves under E.D. Wash. LCivR 7(i)(2)(C) for expedited consideration of its Motion for Partial Summary Judgment, which it plans to file on June 29, 2020. Plaintiff intends to seek summary judgment on its challenge to the U.S. Department of Education's restriction on student eligibility for CARES Act emergency financial assistance grants based on the Department's interpretation of 8 U.S.C. § 1611, *i.e.*, that such grants constitute

PLAINTIFF'S MOTION TO
EXPEDITE AND SET BRIEFING
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1

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Complex Litigation
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1 “Federal public benefits” to which most non-citizens are ineligible. *See Oakley*
 2 *v. DeVos*, No. 20-cv-03215-YGR, 2020 WL 3268661, at *13-16 (N.D. Cal.
 3 June 17, 2020).

4 Good cause for expedited consideration of the motion for partial summary
 5 judgment exists because, due to the financial and health emergencies posed by
 6 COVID-19, there are thousands of students in Washington institutions of higher
 7 education who are in need of CARES Act grants to remain in school, and in some
 8 cases to survive. *See, e.g.*, Declaration of Brian Dixon ¶ 6 (Dixon Decl.). These
 9 impacts have disproportionately affected students of color. *Id.* Some of these
 10 students have been denied CARES Act emergency grants due to the
 11 Department’s eligibility restriction referred to above, which prevents students
 12 who participate in the Deferred Act for Childhood Arrivals program from
 13 receiving them. Dixon Decl. ¶ 7; *cf. Dep’t of Homeland Sec. Regents of the Univ.*
 14 *of California Wolf v. Vidal*, No. 18-587, 2020 WL 3271746 (June 18, 2020).

15 Every day that passes where students who should be eligible for emergency
 16 grants are denied this money raises the risk of students disengaging, dropping out
 17 of school, and being forced to change their educational plans. Dixon Decl. ¶ 8.
 18 This is an immediate problem. Washington State University (WSU), for example,
 19 is on a semester system, and students will resume classes in the middle of August.
 20 Students must begin making plans now to return to school. Having access as soon
 21 as possible to money to help pay for unexpected expenses caused by COVID-19
 22

1 will make the difference for some students who may not otherwise be able to
 2 return to WSU for their fall semester. Dixon Decl. ¶ 9. The local rules' time
 3 requirements for a hearing date necessitate that Washington have its motion
 4 decided as soon as possible.

5 Washington cannot file a motion for summary judgment that resolves this
 6 entire case in time to get the students referred to above the relief they need.
 7 Resolution of Washington's arbitrary and capricious claim (Count II) "is based
 8 on the administrative record and the basis for the agency's decision must come
 9 from the record." *Ass'n of Irrigated Residents v. U.S. E.P.A.*, 790 F.3d 934, 942
 10 (9th Cir. 2015). Here, the Department has not yet filed the Administrative Record.
 11 Further, once the Department files the Record, Washington will need time to
 12 analyze its sufficiency and, if Washington has objections, to negotiate or litigate
 13 its adequacy. *See, e.g., Washington v. United States Dep't of State*,
 14 No. C18-1115RSL, 2019 WL 1254876 (W.D. Wash. Mar. 19, 2019).
 15 Consequently, Washington cannot move for summary judgment on Count II until
 16 after the Administrative Record is produced and its sufficiency is resolved, a
 17 process that easily could take at least until September.

18 Opposing party's position. On June 22, 2020, Plaintiffs' counsel e-mailed
 19 counsel for Defendants, and on June 24, 2020, Plaintiff's counsel spoke by
 20 telephone with Defendants' counsel seeking consent to this motion. The
 21 Department opposes this motion.
 22

1 RESPECTFULLY SUBMITTED this 24th day of June 2020.

2 ROBERT W. FERGUSON
3 Attorney General of Washington

4 /s/ Jeffrey T. Sprung

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17 *Attorneys for Plaintiff State of Washington*

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 24th day of June 2020, at Seattle, Washington.

/s/ Jeffrey T. Sprung

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Assistant Attorney General